IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of United States Trademark Registration No. 2,737,029
Owned by Linda Rodman, issued on July 15, 2003
For the mark DUBS for "land vehicle parts, namely wheels" in Class 012

AUTO ACUITY, LLC Petitioner, vs. RODMAN, LINDA Registrant.	Cancellation No. 92045710 **MOTION TO DISMISS**

Registrant moves for dismissal of Petitioner's Petition to Cancel for lack of standing.

I. INTRODUCTION

Petitioner has failed to plead facts sufficient to show a personal interest in the outcome of this proceeding beyond that of the general public. Petitioner's own trademark registrations and/or pending applications have not been rejected or restricted by Registrant's registration. Petitioner neither alleges likelihood of confusion or any other sufficient basis for future personal damage. Petitioner therefore lacks standing and Registrant moves for dismissal of the Petition to Cancel.

II. LEGAL STANDARDS REGARDING STANDING

"For a petitioner to prevail in a cancellation proceeding, it is incumbent upon that party to show . . . that it possesses standing to challenge the continued presence on the register of the subject registration . . . ." *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1026 (C.C.P.A. 1982). Standing requires that the petitioner is suffering an "injury in fact," which must be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Bennett v. Spear*, 520 U.S. 154, 167 (1997). The petitioner must also show a "causal connection" between the injury and the registrant's registration, i.e., the injury must be fairly traceable to the

registration, and that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* Moreover, a party may not raise the claims of a third party[1] or of the general public.[2] *See, e.g., Sierra Club v. Morton*, 405 U.S. 727, 732-740 (1972). Finally, a party must raise a claim within the zone of interest protected by the statute in question. *Assoc. of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970).

Here, the statute in question is the Lanham Act. Section 14 grants standing in a cancellation proceeding to petitioners who have been damaged by a trademark registration, or have a good faith belief that they will be damaged in the future by the registration. *See* 15 U.S.C. § 1064. A typical past or present damage caused by a registration is the rejection of the petitioner's trademark application(s) based on the registrant's registration. *See Lipton*, 670 F.2d at 1029. An allegation of future damage is typically based on an allegation of likelihood of confusion between the registrant's registration and the petitioner's marks. *See id.*

"The question of standing is to be determined upon the well-pleaded allegations of the complaint . . . ."[3] *Id.* at 1027. "A party's pleading lays the foundation for standing." *Id.* at 1028. "Thus, if it does not plead facts sufficient to show personal interest in the outcome beyond that of the general public, the case may be dismissed for failure to state a claim." *Id.* However "[a] petitioner's allegations alone do not establish standing." *Id.* Moreover, only allegations that have been made in good faith may be used to establish standing. *See id.* at 1027.

III. APPLICATION OF LAW TO FACTS

Registrant's registration claims the word mark "DUBS" for "land vehicle parts, namely wheels." *See* U.S. Trademark Registration No. 2,737,029. The Petitioner is the Applicant of

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[1] This is also known as *jus tertii*. *See, e.g.,* Henry Mogahan, *Third Party Standing*, 84 COLUM. L. REV. 277, 278 n.6 (1984).

[2] This is also known as the prohibition of "generalized grievances." *See Warth v. Seldin*, 422 U.S. 490, 499 (1975); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 574-75 (1992) (discussing the prohibition of "taxpayer suits").

[3] This is also known as the "well-pleaded complaint rule." *See, e.g.,* ERWIN CHEMERINSKY, FEDERAL JURISDICTION 274 (3d ed. 1999) (citing *Louisville & Nashville R.R.. Co. v. Mottley*, 211 U.S. 149 (1908)).

pending U.S. Trademark Application Serial No. 78/589,728 for "GET DUBS," designating automobile parts and accessories, but not including wheels. Petitioner's Application has been allowed for publication for opposition, i.e., Registrant's registration has not caused rejection of Petitioner's Application. Registrant has not moved to oppose Petitioner's Application either. Hence, Petitioner's trademark rights have not been damaged by Registrant's registration.

Moreover, Petitioner has not pleaded likelihood of confusion between Registrant's Registration and Petitioner's Application, or other marks used by Petitioner. Hence, Petitioner has not alleged any future damages to its trademark rights caused by Registrant's registration either.

With regard to Petitioner's claim of genericness, Petitioner has no good-faith basis for its allegation that the term "DUBS" is generic for "wheels." *See* Pet. to Cancel at 2-3. Even if accepting the hearsay statements contained in Petitioner's unauthenticated exhibits as true, Petitioner's exhibits only allege that there are some people in some geographic areas who use a slang word to refer to one specific type of rim of a size of twenty inches in diameter. In fact, from the material provided by petitioner, it appears that "dub" is a drug culture slang abbreviation for "double dime bag of marijuana" and stands for the number 20, rather than for the term "wheel." *See* Pet. to Cancel, Ex. B., at 3.[4] If any slang term used by a drug dealer or user somewhere in the United States for one specific variant of a good were enough to invalidate a federal trademark registration, there would probably not be many registrations left. In short, even if one accepted all of Petitioner's unauthenticated hearsay exhibits as true, they would not prove genericness. *See, e.g., NetSpeak Corp. v. Columbia Telecomm. Group, Inc.*, Opp. No. 91110328, 2004 TTAB LEXIS 309, at *27-*28 (T.T.A.B. 2004) (holding that "[t]here is a high standard to find a term generic" and that petitioner's dictionary definitions and articles from printed publications were not enough to "establish[], by a preponderance of the evidence," that

[4] Unfortunately, Petitioner has failed to consecutively number the pages contained within its exhibits. Registrant is referring to the third consecutive page found in Registrant's Exhibit B, which shows the first page of an unauthenticated copy of an article that was apparently printed off the New York Times web site.

the mark at issue was generic and should be cancelled on that basis). Hence, Petitioner's allegation of genericness lacks a good-faith basis and is therefore not available to establish standing either. *See Nobelle.com, LLC v. Qwest Communications Int'l, Inc.*, 66 U.S.P.Q.2d 1300, 1304 (T.T.A.B. 2003) (finding petitioner's allegations of personal injury based on descriptiveness or genericness of the registered mark not sufficient to establish standing).

IV. CONCLUSION

Since Petitioner has not been damaged by Registrant's registration and has failed to allege a sufficient basis for likely future damage by Registrant's registration, Registrant respectfully requests that Petitioner's Petition to Cancel be dismissed.

DATED: May 25, 2006

Respectfully submitted,

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Docket No. 110.2*1/M522

CERTIFICATE OF MAILING AND SERVICE

I certify that on May 25, 2006, the foregoing **MOTION TO DISMISS** is being deposited with the United States Postal Service by first-class mail addressed to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

It is further certified that on May 25, 2006, the foregoing **MOTION TO DISMISS** is being served by mailing a copy thereof by first-class mail addressed to:

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